

BANKING DEPARTMENT
64B Old Suncook Road
Concord, New Hampshire 03301
Tel. 271 - 3561

CHAPTER Ban 2500 FIRST MORTGAGE BANKERS AND BROKERS

Statutory Authority: RSA 397-A:20 & 397-A:5,II(c)

PART Ban 2501 DEFINITIONS

Ban 2501.01 "Applicant" means an individual or organization that has filed a license application with the banking department pursuant to RSA 397-A.

Source. #4228, eff 11-17-87, EXPIRED 11-17-93

New. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.02 "Application" means an application form provided by the banking department, completed by the applicant and filed with the banking department, together with all requisite attachments, by an individual or organization for approval of a license pursuant to RSA 397-A.

Source. #4228, eff 11-17-87, EXPIRED 11-17-93

New. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.03 "Balloon payment" means the last payment made pursuant to a payment schedule which is characterized by regular periodic payments that when aggregated do not fully amortize the outstanding principal balance by the maturity date resulting in a final payment substantially larger than regular periodic payments.

Source. #4228, eff 11-17-87, EXPIRED 11-17-93

New. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.04 "Branch office" means a branch office as defined in RSA 397-A:1, II.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.05 "Cash equivalents" mean marketable securities with original maturities of 90 days or less that are readily convertible to known amounts of cash.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.06 "Licensee" means a person, whether mortgage banker or mortgage broker, duly licensed by the bank commissioner pursuant to the provisions of RSA 397-A.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.07 "Liquid Assets" means cash, cash equivalents, or marketable securities resulting from the subtraction of short-term liabilities from short-term assets.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.08 "Marketable securities" means stocks and bonds that can be readily sold on stock exchanges or over-the-counter markets.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.09 "Net worth" means total assets minus total liabilities.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.10 "Person" means an individual, corporation, business trust, estate, trust, partnership, association, 2 or more persons having a joint or common interest, or any other legal or commercial entity however organized.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.11 "Principal place of business" means the address of an applicant's or licensee's principal office.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.12 "Principal owners" means owners of a licensee and includes all principals of a proprietorship, partnership, estate, trust, association, privately held corporation and owners of 10% or more of a publicly held corporation.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.13 "Rate lock commitment" means a contractual obligation of a licensee to provide an offered rate of interest for a proposed loan which will not expire or be withdrawn by the licensee before a stated time period. The term does not include interest rates set within 20 days of a closing date.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.14 "Real property" means real property as defined in RSA 397-A:1, XI.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.15 "Senior officer" means an officer of a corporation at the level of a senior vice president or above.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.16 "Short-term" means liabilities that mature within one year or assets that are convertible to cash within one year.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.17 "Time sharing interest" means an interest in real property with the exclusive right to occupy one or more condominium units for less than 60 days each year for a period of more than 5 years from the date of execution of an instrument for the disposition of such right, regardless of whether such right is accompanied by a fee simple interest or a leasehold interest, or neither of them, in a condominium unit. Time sharing interest includes "interval ownership interest," "vacation license," or any other similar term.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

Ban 2501.18 "Trade name" means the name under which the licensee operates, as registered with the secretary of state in accordance with RSA 349:1.

Source. #6611, eff 10-22-97; ss by #7698, eff 6-5-02

PART Ban 2502 LICENSE REQUIREMENTS

Ban 2502.01 License Required.

(a) Any person not exempt under RSA 397-A:4, that, in its own name or on behalf of other persons, engages in the business of making or brokering first mortgage loans secured by real property located in the state of New Hampshire shall obtain a license from the banking department.

(b) Licensing of secondary market mortgage purchasers shall not be required, except if a secondary mortgage purchaser:

- (1) Advances funds to a borrower in excess of the original loan amount;
- (2) Directly provides the funds for a loan to a borrower;
- (3) Indirectly provides the funds for a loan to a particular borrower; or
- (4) Otherwise engages in the business of funding first mortgage loans.

Source. #4338, eff 11-17-87; and by #4458, eff 7-28-88,
EXPIRED: 7-28-94

New. #6611, eff 10-22-97; amd by #7698, eff 6-5-02

Ban 2502.02 Application Form 397-A-2.

(a) All applicants for a first mortgage banker or broker license shall apply on Form 397-A-2 available from the office of the bank commissioner.

(b) The application shall include the following:

- (1) The name of the applicant;

- (2) Federal tax identification number;
- (3) Whether the application is for a new license or a renewal of a current license;
- (4) Whether the applicant intends to operate as a mortgage banker, mortgage broker or both;
- (5) If mortgage broker is designated in (4) above:
 - a. Whether authorization to issue rate lock commitments is requested;
 - b. Original \$20,000 surety bond or original continuation certificate;
 - c. Expiration date of bond; and
 - d. Name and telephone number of insurance agent;
- (6) Designation of the business form of the applicant;
- (7) If a corporation under (6) above, a copy of its certificate of incorporation with the date and state of incorporation;
- (8) If a corporation under (6) above is a foreign corporation, a copy of a certificate of authority issued by the New Hampshire secretary of state;
- (9) If the applicant does business under a trade name, the trade name of the applicant's business, with a copy of the trade name certificate issued by the New Hampshire Secretary of State;
- (10) For the applicants principal place of business, the:
 - a. Street address;
 - b. Mailing address;
 - c. Telephone number; and
 - d. Fax number;
- (11) For each branch offices to be licensed, the:
 - a. Street address;
 - b. Mailing address;
 - c. Direct telephone number; and
 - d. Name and title of branch manager;
- (12) For applicants whose principal place of business is located outside of New Hampshire, designation of a New Hampshire agent including:
 - a. Name of agent;

- b. Street address;
 - c. Mailing address; and
 - d. Telephone number;
- (13) For the president, chief executive officer, or senior partner of applicant, their:
- a. Name;
 - b. Title;
 - c. Business address; and
 - d. Direct line telephone number;
- (14) The names, business and residence addresses, and direct line telephone numbers of:
- a. Shareholders owning 10% or more of a corporation's stock, officers, and directors of a corporate applicant;
 - b. The general partners of a general partnership;
 - c. The general and limited partners of a limited partnership;
 - d. The members of a limited liability company; or
 - e. The trustees of a business trust;
- (15) Resumes or written statements which describe the lending and/or loan brokering experience of the applicant organization and the applicant's senior officers, managers, and senior employees;
- (16) List of all current lending and/or loan brokering licenses issued by any other state providing the name of the state, license type, license number and expiration date for each license held;
- (17) Whether the applicant, or any of its owners, directors, partners, members, senior officers, or managers have ever had a lending or loan brokering license revoked, suspended or denied by the New Hampshire banking department or by the licensing authority of any other state.
- (18) If the answer to (17) above is affirmative, an explanation providing a detailed description of the circumstances;
- (19) Whether the applicant, or any of its owners, directors, partners, members, senior officers, or managers have ever been convicted of a felony;
- (20) If the answer to (19) above is affirmative, a written statement on a separate sheet providing complete details, including dates, location, docket number, nature of crime, and a description of penalties and fines;
- (21) For mortgage banker applicants and mortgage banker/broker applicants, a compiled set of financial statements that:

a. Are prepared by a public accountant, certified public accountant, or applicant's financial officer; and

b. Shall include, at a minimum, for the most recent quarter end:

1. A balance sheet;
2. A statement of cash flow; and
3. An income statement;

(22) For individuals, sole proprietors, partnerships, limited liability companies, and closely held corporations, copies of their most recent federal income tax returns;

(23) For publicly traded companies and wholly owned subsidiaries of publicly traded corporations, copies of their most recent Securities and Exchange Commission 10K and 10Q statements, or those of their parent corporation, in-lieu-of the requirements of (21) above;

(24) Information on interest rates, fees, and other charges currently charged or expected to be charged as of December 1 for variable rate and fixed rate loans that:

a. Includes the following:

1. Interest rates;
2. Points charged;
3. Annual percentage rates calculated in accordance with Federal Reserve System Regulation Z, 12 CFR 226, Section 226.14, "Determination of Annual Percentage Rate", as amended;
4. Application fees;
5. Appraisal fees;
6. Credit report fees; and
7. Other charges; and

b. Shall be based upon a \$100,000 first mortgage loan with a loan-to-value ratio of 90% and a 30-year term;

(25) A statement of the index used on variable interest rate determinations;

(26) A statement of the margin used on variable rate loans to borrowers having excellent or "A" credit ratings;

(27) A statement of the percentage of loans to borrowers in the following credit categories:

- a. Excellent, very little risk of default, or "A" credit;
- b. Good, low risk of default, or "B" credit;

- c. Fair, moderate risk of default, or "C" credit; and
- d. Poor, high risk of default, or "D" credit and lower;

(28) Whether the applicant offers any loan products containing balloon payments;

(29) For both new and renewal applicants, a narrative description of proposed or current mortgage banking and/or mortgage brokering operations including:

- a. How loans are funded;
- b. Name(s) in which loans are closed;
- c. If a mortgage broker applicant, the names, addresses, and telephone numbers of correspondent lenders;
- d. Applicant's target market or client base;
- e. Wholesale lending activities;
- f. Fannie Mae, Freddie Mac and/or Ginny Mae approvals, if applicable; and
- g. Policies and procedures for:
 - 1. Processing applications;
 - 2. Underwriting and funding mortgage loans; and
 - 3. Servicing and discharging of mortgage loans;

(30) Whether the applicant closes loans with their own funds or with funds from other sources;

(31) A list of all offices with street and mailing addresses where loan applications relating to New Hampshire real estate are:

- a. Processed;
- b. Underwritten; and
- c. Serviced;

(32) If loans secured by New Hampshire real estate are serviced by third parties, for each third party servicer:

- a. The name of the servicer;
- b. The servicer's mailing and street address;
- c. The servicer's telephone number; and
- d. The name and title of a senior officer; and

(33) For mortgage banker applicants who intend to issue rate lock commitments:

a. A copy of:

1. Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association approvals; and
2. Audited financial statement demonstrating a net worth of at least \$500,000 in cash and/or marketable securities; or

b. If the mortgage banker is a subsidiary of a publicly traded company, the following:

1. Copy of most recent corporate rating for the parent company by Standard and Poor's Corporation or Valueline Investors Survey; and
2. A written guarantee, signed by an authorized officer of the parent company, to protect borrowers from losses resulting from the subsidiary mortgage banker's failure to honor its rate lock commitments.

(c) The applicant, or a duly authorized representative of the applicant, shall date and sign the application. The signature shall be acknowledged before a notary public or justice of the peace.

(d) Form number 397-A-2 shall be used for both new and renewal applications.

Source. #6611, eff 10-22-97

Ban 2502.03 Other Required Forms.

(a) Individual applicants and each senior officer, director, partner, trustee, and owner of 10% or more of an applicant shall complete and submit:

- (1) Form NHBD-5, "Authorization Release Form", as described in Ban 2410.01; and
- (2) Form NHBD-6, "Personal Disclosure Statement", as described in Ban 2410.02.

(b) Individual applicants and each partner, trustee, and owner of 10% or more of an applicant's business shall complete and submit Form NHBD-7, "Personal Financial Questionnaire", as described in Ban 2410.03.

(c) The provisions of Ban 2502.03 (a) and (b) shall not apply to direct subsidiaries or affiliates of any state or federally chartered bank, credit union, savings bank, or savings and loan association the deposits of which are insured by any agency of the federal government.

(d) In lieu of the requirements of Ban 2502.03 (a) and (b), publicly traded companies and their subsidiaries may submit copies of their most recent annual report, proxy statement, and Securities and Exchange Commission 10K and 10Q statements.

Source. #6611, eff 10-22-97

Ban 2502.04 Incomplete Applications.

(a) Applicants for licenses under RSA 397-A shall file fully complete applications with all required attachments for initial and renewal licenses.

(b) The banking department shall provide written notice detailing all incomplete application items to each applicant that files an incomplete application form.

(c) Applicants who fail to file all omitted items within 60 calendar days of the date of such notice shall be deemed to have withdrawn their application, and no further action shall be taken on such application by the banking department.

(d) Applicants who wish to pursue license approval after the time for submission of omitted information has expired shall file a new application together with a new application fee.

Source. #6611, eff 10-22-97

Ban 2502.05 Changes to Application Information.

(a) A licensee shall give written notice to the bank commissioner at least 30 days in advance of a change in the New Hampshire agent designated on Form 397-A-2.

(b) For a new New Hampshire agent under (a) above, a licensee shall provide the new agent's:

- (1) Name;
- (2) Address; and
- (3) Telephone number.

(c) A licensee shall give written notice to the bank commissioner within 10 days after a change in the senior officer, partner, or director designated on Form 397-A-2 to be responsible for the actions of the licensee.

(d) For a change under (c) above, a licensee shall provide the new designee's:

- (1) Name;
- (2) Title;
- (3) Address; and
- (4) Telephone number.

(e) A new designee under (d) above shall submit Form NHBD-6, "Personal Disclosure Statement", and Form NHBD-7, "Personal Financial Questionnaire", if not submitted with the licensee's most recent application, unless these forms are not required pursuant to Ban 2502.03(c) or (d).

(f) A licensee shall give written notice to the bank commissioner at least 10 days in advance of:

- (1) Changes in address or telephone numbers for its principal place of business or other licensed offices in New Hampshire;
- (2) Change of business name; or

(3) Change of ownership.

(g) Changes under (a) and (f) above shall not become effective until the required notice is given to the bank commissioner.

Source. #6611, eff 10-22-97

Ban 2502.06 Surety Bond.

(a) An applicant for a first mortgage banker license submitting a license application whose financial statements demonstrate liquid assets of less than \$100,000 shall submit a surety bond payable to the State of New Hampshire in the amount of \$100,000.

(b) The surety bond under (a) above shall be submitted on a first mortgage banker surety bond form available from the office of the bank commissioner.

(c) The following shall be included on the surety bond form:

- (1) Bond number;
- (2) Name of applicant;
- (3) Principal business address of applicant;
- (4) Description of business form;
- (5) Name of surety company;
- (6) Address of surety company;
- (7) Term of surety bond;
- (8) Amount of surety bond;
- (9) Authorized signature of representative of the applicant; and
- (10) Authorized signature of representative of the surety company;

(d) An applicant for a first mortgage broker license shall submit a surety bond or continuation certificate in the amount of \$20,000.

(e) The surety bond under (d) above shall be submitted on a first mortgage broker surety bond form available from the office of the bank commissioner.

(f) The surety bond form under (e) above shall be completed as specified in (c) above except for the amount of the bond under (c)(8).

(g) Original surety bonds or continuation certificates shall be submitted.

Source. #6611, eff 10-22-97; amd by #7698, eff 6-5-02

Ban 2502.07 Net Worth Requirements.

For purposes of RSA 397-A:5, II (c), a mortgage banker applicant shall have:

- (a) A positive net worth; and
- (b) Liquid assets of at least \$100,000.

Source. #6611, eff 10-22-97; amd by #7698, eff 6-5-02

Ban 2502.08 Appeal of License Denial, Revocation, or Other Administrative Actions.

(a) A license applicant or a license renewal applicant who receives a conditional denial from the banking department shall have 15 days from the date of the conditional denial to file a request for hearing with the banking department pursuant to RSA 397-A:7, II or RSA 397-A:8, IV. Requests for hearings shall be made in writing and shall contain the name, mailing address, and telephone number of the license applicant. In addition, the license applicant shall state the purpose for the requested hearing. All requests for hearings completed by the license applicant and received by the department within 15 days from the date of the conditional denial shall be granted.

(b) A licensee who receives a complaint and notice of hearing, regarding the pending revocation, suspension, modification or amendment of their license by the banking department, shall have 15 days from the date of such a complaint and notice of hearing to file an answer to the complaint with the banking department.

(c) A licensee may file a request for rehearing with the board of trust company incorporation pursuant to RSA 397-A:17, IV.

(d) All hearings held as a result of requests made pursuant to Ban 2502.08 (a) or (b) shall be held in accordance with the provisions of Ban 200.

Source. #6611, eff 10-22-97; ss by #7696, eff 6-5-02

PART Ban 2503 ANNUAL REPORT

Ban 2503.01 Form.

(a) Each licensee shall file an annual report with the bank commissioner in accordance with RSA 397-A:13.

(b) Form 397-A-1 entitled "First Mortgage Banker/Broker Annual Report" shall be used for the purposes of (a) above and shall be available from the office of the bank commissioner.

(c) A licensee shall provide the following information on Form 397-A-1:

- (1) Name of the licensee;
- (2) The license number for the reporting period;
- (3) Trade name of business, if any;

- (4) The address of the principal place of business;
- (5) Total number of offices included in the information reported;
- (6) Whether the licensee is operating as a mortgage banker, mortgage broker or both;
- (7) For the person completing the form, the person's:
 - a. Name;
 - b. Address;
 - c. Direct line telephone number; and
 - d. Title;
- (8) On Schedule A of Form 397-A-1:
 - a. A statement of the number of New Hampshire first mortgage loans brokered during the reporting year; and
 - b. The dollar amount of brokered loans under a. above;
- (9) On Schedule B of Form 397-A-1:
 - a. A statement of the number of New Hampshire first mortgage loans made during the reporting year;
 - b. The dollar amount of New Hampshire loans made;
 - c. The total outstanding number of New Hampshire first mortgage loans retained or serviced as of December 31st ; and
 - d. The total dollar amount of New Hampshire loans retained or serviced as of December 31st;
- (10) On Schedule C of Form 397-A-1, an analysis of New Hampshire first mortgage loans including:
 - a. The number of loans made during the reporting period; and
 - b. The total dollar amount for loans in the following dollar ranges:
 - 1. \$1 through \$50,000;
 - 2. \$50,001 through \$75,000;
 - 3. \$75,001 through \$100,000;
 - 4. \$100,001 through \$125,000;
 - 5. \$125,001 through \$150,000;

6. Over \$150,000; and

7. Total, which shall equal the sum of loans reported in items 1. Through 6., and which shall equal "Loans made during the reporting period" reported in PART I of this schedule.

(d) An officer of the licensee shall sign a statement that to the best of his/her knowledge and belief the statements contained in the annual report, including the accompanying schedule and statements, if any, are true and correct. The signature of the officer shall be acknowledged before a notary public or justice of the peace.

Source. #4338, eff 11-17-87; ss by #4458, eff 7-28-88,
EXPIRED: 7-28-94

New. #6611, eff 10-22-97

Ban 2503.02 Late Filing Penalties. A penalty assessed in accordance with RSA 397-A:13,III shall accrue as follows:

(a) If the license has not lapsed, to the earlier of the following:

(1) The date the required annual report is postmarked or, if hand delivered, the date received by the department; or

(2) The date of expiration of the licensee's license;

(b) If license has lapsed, until December 31 of the year in which the report was required to be filed.

Source. #6611, eff 10-22-97

PART Ban 2504 LOANS WITH BALLOON PAYMENT PROVISIONS

Ban 2504.01 Balloon Payment Disclosures.

(a) A mortgage banker or mortgage broker who receives an application for a loan containing a balloon payment shall give a written disclosure statement to the borrower that includes the following:

(1) A statement to the effect that a balloon payment will be due and payable at maturity;

(2) The estimated amount of the balloon payment that will be due at maturity, provided all payments are made in accordance with the loan terms;

(3) A statement to the effect that the lender is not obligated to finance the balloon payment; and

(4) A statement that the value of mortgaged real estate may change during the term of the loan and that on the date of loan maturity the real estate value may not support a new loan in an amount equal to the balloon payment.

(b) The time for presenting disclosure statements under (a) above to borrowers shall be as follows:

(1) Within 3 days after a written loan application for a loan containing a balloon provision is received by a mortgage banker or mortgage broker; or

(2) If the lender's offer to lend is contingent upon entering into a balloon note, at the time a loan commitment letter is submitted to the borrower.

(c) The forms used for disclosure statements under (a) above shall:

(1) Be signed and dated by the borrowers;

(2) Be retained with the loan file by both the mortgage banker and mortgage broker; and

(3) Include a duplicate original for the borrowers.

(d) The notice required by Ban 2504.01(a) shall be printed in at least 10-point bold type in the following form:

"NOTICE

The loan for which you have applied contains a balloon provision. This means that even if you make all payments in full and on time, the loan will not be paid in full by the final payment date. A single balloon payment of \$_____ will be due and payable in full on _____(Date), provided all payments are made in accordance with the loan terms, and the interest rate does not change for the entire loan term. The balloon payment may be more or less depending on your payment history, and, if you have applied for an adjustable rate mortgage, any interest rate changes that occur during the life of the loan. _____(Name of Lender) , or any lender to which your loan is transferred or assigned, is under no obligation to finance the amount of the balloon payment.

The value of the real estate securing this loan may change during the term of the loan. On the date the balloon payment becomes due, the value of the real estate may not be sufficient to secure a new loan in an amount equal to the balloon payment.

Borrower(s):

Lender:

Borrower

_ Authorized Representative

Borrower

_ Title

Date

_ Date"

Source. #4338, eff 11-17-87; ss by #4458, eff 7-28-88,
EXPIRED: 7-28-94

New. #6611, eff 10-22-97

PART Ban 2505 RATE LOCK COMMITMENTS

Ban 2505.01 Requirements.

(a) Prior to issuing rate lock commitments to any mortgage loan applicant or any other mortgage banker, a mortgage banker shall:

- (1) Have and maintain liquid assets of not less than \$500,000 in cash and/or marketable securities; and
- (2) Be approved to sell mortgages directly to the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association; or
- (3) Be a subsidiary of a publicly traded company which:
 - a. Has its common stock rated among the four highest categories by Standard and Poor's Corporation or Valueline Investment Survey; and
 - b. Issues a written guarantee to protect borrowers from losses resulting from the subsidiary mortgage banker's failure to honor its rate lock commitments.

(b) A mortgage banker who fails to meet the requirements of Ban 2505.01(a) shall be prohibited from issuing a rate lock commitment to any borrower unless the mortgage banker has obtained in writing from a bank, or a mortgage banker or investor meeting the requirements of Ban 2505.01(a):

- (1) A binding interest rate guarantee; or
- (2) A binding takeout commitment.

(c) If an interest rate guarantee or takeout commitment expires at no fault of a borrower or his/her agents, a mortgage banker, issuing rate lock commitments under Ban 2505.01(b), shall obtain another binding interest rate guarantee or takeout commitment from a bank or mortgage banker authorized to issue rate lock commitments within 7 business days.

(d) A mortgage banker issuing rate lock commitments under Ban 2505.01(b) shall give verbal notice immediately to the commissioner and written notice to the commissioner within 3 business days of the expiration of a binding interest rate guarantee or takeout commitment under Ban 2505.01(b).

(e) A mortgage broker shall not issue a rate lock commitment except:

- (1) When acting as an agent for a mortgage banker who complies with the provisions of Ban 2505.01(a); and
- (2) When the relationship between the mortgage broker and the mortgage banker issuing the rate lock commitment has been disclosed in writing to the borrower prior to issuing the rate lock commitment.

Source. #4338, eff 11-17-87; ss by #4458, eff 7-28-88,
EXPIRED: 7-28-94

New. #6611, eff 10-22-97; amd by #7698, eff 6-5-02

PART Ban 2506 ESCROW ACCOUNTS OF MORTGAGE COMPANIES

Ban 2506.01 Interest on Mortgage Escrow Funds. Mortgage companies shall give credit to borrowers for interest earned on funds deposited in escrow accounts maintained for the payment of property taxes or insurance premiums to the date of an assignment, transfer, or discharge of a mortgage.

Source. #4338, eff 11-17-87; ss by #4458, eff 7-28-88; ss by #5013, eff 11-28-90; rpld by #6313, eff 8-3-96

New. #6611, eff 10-22-97

PART Ban 2507 FEES PAID TO MORTGAGE BANKERS OR BROKERS

Statutory Authority: RSA 397-A:16,I

Ban 2507.01 Safekeeping of Fees.

(a) All fees paid by residential mortgage loan applicants to a mortgage banker or mortgage broker shall be deposited in one or more trust accounts maintained at a federally insured bank or credit union. Such trust accounts shall only contain funds collected from residential loan applicants.

(b) Fees subject to (a) above shall include, but not be limited to, the following:

- (1) Application fees;
- (2) Rate lock commitment fees;
- (3) Prepaid commissions or broker fees;
- (4) Prepaid attorney charges;
- (5) Appraisal fees; and
- (6) All other prepaid fees related to the mortgage loan transaction.

(c) Mortgage brokers and mortgage bankers may withdraw trust account funds for the following purposes only:

- (1) For commissions earned for services actually performed;
- (2) For direct payment to third parties for services rendered; or
- (3) For reimbursement for authorized fees paid by mortgage brokers or mortgage bankers to third parties for services rendered.

(d) For purposes of (c)(1) above, a mortgage broker or mortgage banker shall be deemed to have performed when:

- (1) A residential mortgage loan has closed;
- (2) The mortgage loan applicant has withdrawn the loan application in writing; or
- (3) The loan has been denied.

(e) All withdrawals under (c) above shall be accounted for through written documentation evidencing the amounts of offsets. Such documentation shall also be retained in the loan files of applicants.

(f) Mortgage brokers and mortgage bankers shall maintain complete and accurate trust account records, including:

- (1) Bank statements;
- (2) Check stubs;

- (3) Cancelled, voided or unused checks;
- (4) Deposit tickets;
- (5) Reconciliations or other comparable account records; or
- (6) Any other documents pertaining to trust account activity.

(g) Upon written request by the banking department, a mortgage broker or mortgage banker shall produce trust account records.

(h) A mortgage broker or mortgage banker shall not commingle fees collected from loan applicants with the banker's or broker's own funds or use any part of a loan applicant's money in the conduct of the licensee's business except as set forth in Ban 2507.01(c).

(i) A mortgage broker or mortgage banker shall notify the banking department in writing within 3 business days of any shortage, or of any improper or unauthorized offset to a trust account.

Source. #4338, eff 11-17-87, EXPIRED: 11-17-93

New. #6611, eff 10-22-97

Ban 2507.02 Fees Charged by Lenders for Services Rendered.

(a) Fees charged by lenders pursuant to the authority granted by RSA 397-A:16, I shall only be assessed for services actually provided to borrowers.

(b) Services for which fees may be charged under RSA 397-A:16, I shall not include fees for assignment of loans to secondary market or other loan purchasers.

(c) Lenders shall not charge borrowers fees or assess costs for services or documents to which borrowers are entitled by law.

Source. #4338, eff 11-17-87, EXPIRED: 11-17-93

New. #6611, eff 10-22-97